



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sheraton South Hills

File: B-225092

Date: November 10, 1986

DIGEST

A protest not filed within 10 working days after the protester was orally advised its agency protest was denied is untimely and will not be considered on the merits.

DECISION

Sheraton South Hills (Sheraton) protests the award of a contract to Holiday Inn under invitation for bids (IFB) NO DAKF27-86-B-0064, issued by the Department of the Army for provision of meals and lodging to armed forces applicants at Pittsburgh, Pennsylvania.

We dismiss the protest as untimely.

The IFB included a cover sheet form entitled "Information to Offerors or Quoters." A check was marked in the form box indicating that the procurement was set-aside, but all boxes indicating the type of set-aside (e.g., small business, labor surplus area concerns, or combined small business/labor surplus area concerns) were left blank. Because a standard clause incorporated by reference elsewhere in the IFB indicated that the procurement was not set aside for labor surplus area concerns, Sheraton concluded that it must be a small business set-aside.

On August 16, 1986, 4 days after bid opening, Sheraton protested to the Army that the apparent low bidder, Holiday Inn, was a large business ineligible for award under a small business set-aside. During a phone conversation with the contracting officer on or about September 3, 1986, Sheraton learned its protest would be denied. After waiting for a written denial, Sheraton asked in a letter dated September 16, 1986, for a ruling. In an October 23, 1986,

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letter denying the protest, the contracting officer stated that the procurement was intended to be unrestricted, and that the awardee never purported that its business was small. Sheraton protested to our Office on October 30, 1986, contending that the set-aside restriction in the IFB should be binding, and that its size status protest should have been forwarded to the Small Business Administration or the IFB should have been cancelled.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1986), provide that when a protest is initially filed with a procuring agency, any subsequent protest to our Office must be filed within 10 working days of initial adverse agency action. This is defined as any action or inaction that is prejudicial to the position taken in the protest filed with the agency. 4 C.F.R. § 21.0(e). We have recognized that oral notification of the denial of an agency-level protest is sufficient to start the 10 working-day period running and that a protester may not delay filing its protest until receipt of written confirmation. Blinderman Construction Co., Inc., B-222523, June 16, 1986, 86-1 C.P.D. ¶ 554.

Sheraton, by its own admission, was orally advised by the Army on or about September 3 that its protest would be denied. Since Sheraton's protest was received in our Office on the 40th working day after it was notified that its agency-level protest had been denied, it is untimely and will not be considered on the merits.

Furthermore, to the extent that Sheraton contends the solicitation was ambiguous regarding set-aside restrictions, its protest on that issue should have been filed before bid opening. 4 C.F.R. § 21.2(a)(1) (1986); See Don's Wheelchair & Ambulance Service, Inc., B-216790, Jan. 22, 1986, 85-1 C.P.D. ¶ 82.

The protest is dismissed.



Robert M. Strong
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